

1 J. Craig Williams, Esq., CSBN 134308
 2 WLC | The Williams Law Corporation
 3 One Park Plaza, Suite 600
 4 Irvine, CA 92614-5987
 5 T: 949-422-7617
 6 E: jrcraig.williams@wlc-legal.com

7 Attorneys for Plaintiff Precision Tube Bending

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 PRECISION TUBE BENDING, a California
 11 corporation,

12 Plaintiff,

13 v.

14 EXCELSIOR, LLC, a California limited liability)
 15 company; MARY A. HUNT, Trustee of the)
 16 EDWARD S. HUNT, JR. & MARY A. HUNT)
 17 FAMILY TRUST SURVIVOR'S TRUST, dated)
 18 12/15/2015, a California trust; JEFFREY E.)
 19 HUNT, Trustee of the JEFFREY E. HUNT)
 20 DESCENDANTS TRUST U/T/D February 6,)
 21 2021, a California trust; JEFFREY E. HUNT,)
 22 Trustee of the TODD D. HUNT)
 23 DESCENDANTS TRUST U/T/D February 6,)
 24 2021, a California trust; JEFFREY E. HUNT,)
 25 Trustee of the LINDA NANORA HUNT EDDY)
 26 DESCENDANTS TRUST U/T/D February 6,)
 27 2021, a California trust; B. NEAL BEAVER &)
 28 VIRGINIA BEAVER, Trustees of the BEAVER)
 FAMILY TRUST, a California Trust;)
 AMERICAN BEAUTI PLEAT, INC., a)
 suspended California corporation and a Texas)
 corporation; and, DOES 1-100,)

Defendants.

Case No.:

COMPLAINT FOR:

- (1) **CONTRIBUTION UNDER CERCLA (42 U.S.C. §§ 9613, *et seq.*)**
- (2) **RESPONSE COSTS UNDER CALIFORNIA HEALTH & SAFETY CODE (§§ 25300, *et seq.*);**
- (3) **NUISANCE;**
- (4) **TRESPASS;**
- (5) **NEGLIGENCE;**
- (6) **IMPLIED EQUITABLE INDEMNITY;**
- (7) **COMPARATIVE INDEMNITY;**
- (8) **DECLARATORY RELIEF; and,**
- (9) **CERCLA DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Precision Tube Bending (PTB) makes the following allegations:

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction over the subject matter of this Complaint as a federal
4 question pursuant to Comprehensive Environmental Response, Compensation, and Liability Act
5 (CERCLA) sections 107(a), 113(a), (b) and (f), 42 U.S.C. 9607(a) and 9613(a), (b) and (f); the
6 Solid Waste Disposal Act (SWDA), 42 U.S.C. section 6972(a); and jurisdiction pendent and
7 ancillary over claims under California common law torts of nuisance, negligence and trespass
8 pursuant to 28 U.S.C. section 1367. Declaratory relief is sought pursuant to CERCLA
9 section 113(g)(2), 42 U.S.C. § 9613(g)(2) and the Declaratory Judgment Act, 28 U.S.C. sections
10 2201-2202, as well as California Code of Civil Procedure section 1060.

11
12 2. Venue lies in this Court because the alleged Releases, Disposals and damages
13 alleged in this Complaint took place within the jurisdictional boundaries of the United States
14 District Court for the Central District of the State of California.

15
16 3. PTB has satisfied all jurisdictional and administrative prerequisites to the filing of
17 this Complaint.

18
19 4. Plaintiff PTB is a California corporation, authorized to conduct business and
20 currently conducting business in the State of California, and its principal place of business is in
21 Santa Fe Springs, California. PTB is an aerospace parts manufacturer located at 13626 Talc Street
22 Santa Fe Springs, CA 90670, adjacent to Defendants' property (PTB property).

23
24 5. Defendant Excelsior, LLC, is a California limited liability company with its
25 principal place of business in Huntington Beach, California. Excelsior, LLC is the current Owner
26 of the real property at 13545 Excelsior Drive Santa Fe Springs, CA 90670, adjacent to PTB's
27 property (Excelsior property).

1 6. Defendant Mary A. Hunt is the Trustee of the Edward S. Hunt, Jr. & Mary A. Hunt
2 Family Trust Survivor's Trust, dated 12/15/2015, is a California trust. This trust is a prior Owner
3 of the Excelsior property.

4
5 7. Defendant Jeffrey E. Hunt is the Trustee of the Jeffrey E. Hunt Descendants Trust
6 U/T/D February 6, 2021, a California trust. This trust is a prior Owner of the Excelsior property.

7
8 8. Defendant Jeffrey E. Hunt is also the Trustee of the Todd D. Hunt Descendants
9 Trust U/T/D February 6, 2021, a California trust. This trust is a prior Owner of the Excelsior
10 property.

11
12 9. Defendant Jeffrey E. Hunt is also the Trustee of the Linda Nanora Hunt Eddy
13 Descendants Trust U/T/D February 6, 2021, a California trust. This trust is a prior Owner of the
14 Excelsior property.

15
16 10. Defendants B. Neal Beaver & Virginia Beaver are the Trustees of the BEAVER
17 FAMILY TRUST, a California Trust. This trust is a prior Owner of the Excelsior property.

18
19 11. Defendant American Beauti Pleat, Inc. is a suspended California corporation and
20 an active Texas corporation (ABP). This corporation is a prior Operator at the Excelsior property.

21
22 12. Defendant DOES 1-100 are named as fictitious individuals and/or entities who will
23 either be named accordingly when their identities are discovered or dismissed prior to trial. PTB
24 alleges that like the Defendants named above, these Doe Defendants are also in some way
25 responsible for the presence of Hazardous Substances contamination in the soils and groundwater
26 under PTB's property. Plaintiff seeks the Court's indulgence in naming more than the permitted
27 number of Doe Defendants. Plaintiff anticipates naming more than ten Doe Defendants.

OTHER DOE OWNERS, OPERATORS, GENERATORS, SUPPLIERS AND HAULERS

13. PTB is informed and believes and based thereon alleges that additional Doe individuals and entities are past or present Owners, Operators, generators and equipment and chemical suppliers, as well as Disposal haulers who have contributed or are contributing to the past or present handling, storage, transportation, Release or Disposal of Hazardous Substances at the Excelsior property that have caused the release of Hazardous Substances in the soils and groundwater in and under its Santa Fe Springs leasehold. The true names and capacities, whether individual, corporate, associate or otherwise of these Doe Defendants are presently unknown to PTB, who therefore asks leave of Court to amend this Complaint when the same have been ascertained. PTB believes there may be as many as 100 of these Doe individuals/entities involved in these capacities with its property and adjacent properties.

14. PTB is informed and believes and based thereon alleges that each of the Defendants are jointly and severally liable to PTB for 1,4-dioxane and other Hazardous Substances that migrated via soils and groundwater from Defendants' Excelsior property to PTB's property.

GENERAL ALTER EGO ALLEGATIONS

15. PTB is informed and believes and based thereon alleges that Defendants, and each of them, were at all times mentioned the alter egos and/or agents of one another, and that there has existed at all times mentioned, a unity of interest and ownership and control between these Defendants such that any separateness between them has ceased to exist.

16. PTB is informed and believes and based thereon alleges that Defendants at all times mentioned did completely control, dominate, manage and operate themselves, their trusts, companies and corporations as alter egos and/or agents of one another, such that any separateness

1 between them has ceased to exist and recognition of the corporate or trust forms would operate as
2 a sham because they are the alter egos of Defendants and one another.

3 **RCRA NOTICE**

4 17. Concurrently with the service of this Complaint, PTB gives formal, 90-day notice
5 pursuant to the Resource Conservation & Recovery Act (RCRA), as amended, section
6 7002(b)(2)(A), 42 U.S.C. section 6972(b)(2)(A), to the Administrator of the United States
7 Environmental Protection Agency (USEPA), the State of California Environmental Protection
8 Agency (CalEPA), and the named Defendants, notifying them of PTB's intention to commence an
9 action against the parties pursuant to RCRA section 7002(a)(1)(B) and 42 U.S.C. section
10 6972(a)(1)(B).

11
12 18. In the event that neither the Administrator of the USEPA nor CalEPA commences
13 and diligently prosecutes appropriate action as provided in RCRA section 7002(b)(2)(B) and/or
14 (C), 42 U.S.C. sections 6972(b)(2)(B) and/or (C), then unless this action is stayed, PTB will seek
15 to amend this Complaint to add additional claims for relief against Defendants pursuant to RCRA
16 section 7002(a)(1)(B) and 42 U.S.C. section 6972(a)(1)(B).

17
18 **GENERAL ALLEGATIONS**

19 19. The terms "Hazardous Substances" shall have the meaning provided in CERCLA
20 sections 101(14) and 102, 42 U.S.C. section 9601(14). The term "Release" shall have the
21 meaning provided in CERCLA section 101(22), 42 U.S.C. section 9601(22). The term "Disposal"
22 shall have the meaning provided in CERCLA section 101(29), 42 U.S.C. section 9601(29). The
23 term "Removal" shall have the meaning provided in CERCLA section 101(23), 42 U.S.C. section
24 9601(23). The terms "Remedial" and "Remedial Action" shall have the meaning provided in
25 CERCLA section 101(24), 42 U.S.C. section 9601(24).

1 20. In 2021, PTB initiated soil and groundwater investigation at its property. As a
2 result of that investigation, PTB discovered that its property contained elevated levels of various
3 constituents, including, but not limited to, one or more of the Hazardous Substances identified
4 above.

5
6 21. Upon discovering the existence of certain Hazardous Substances on or about its
7 property, PTB reported the discovery to the California Department of Toxic Substances Control
8 (DTSC). Pursuant to a Consent Agreement PTB entered with the DTSC, PTB embarked on a
9 course of regulatory compliance, investigation and removal via a Remedial Action, which
10 disclosed the history of its and adjacent properties. Upon PTB's discovery of Hazardous
11 Substances under its property that did not contribute to these Hazardous Substances, it learned in
12 November 2023 the involvement of the parties named as Defendants.

13
14 22. PTB acknowledges that its investigation discovered one Hazardous Substance that
15 it used in its aerospace parts manufacturing process, Perchloroethylene (PCE), which has been
16 found in its onsite soils and groundwater. PTB was neither permitted to use nor did it use
17 1,1,1-trichloroethane.

18
19 23. A review of California South Coast Air Quality Management District (SCAQMD)
20 documents indicate that a nearby and adjacent business obtained a permit for a Vapor Degreaser
21 that would have used chlorinated solvents. That business was American Beauti Pleat, Inc. (ABP)
22 that operated on the Excelsior property, located upgradient of PTB's property. ABP was first
23 permitted to use 1,1,1-trichloroethane in 1981, but began to operate on the Excelsior property in
24 1967.

25
26 24. 1,4-dioxane is a known stabilizer of 1,1,1-trichloroethane, and ABP's
27 manufacturing operations and Hazardous Substances use on the Excelsior property caused
28

1 1,4-dioxane to be Released to the subsurface soils and groundwater. Indeed, 1,4-dioxane is quite
2 miscible in water and PTB therefore informed and believes and thereon alleges that 1,4-dioxane
3 and other Hazardous Substances Released and/or Disposed of by APB migrated onsite to PTB's
4 property, offsite from the Excelsior property. PTB is informed and believes and thereon alleges
5 that the remaining Defendants did nothing to prevent or cleanup the Hazardous Substances that
6 migrated onto or under PTB's property from the Excelsior property.

7
8 25. In contrast, however, 1,4-dioxane has not been analyzed in PTB's onsite soil
9 samples, so the source of 1,4-dioxane in groundwater at PTB's site does not devolve from PTB.
10 Neither has PTB used a chemical that stabilizes into 1,4-dioxane.

11
12 26. PTB alleges that during, from and after ABP's occupation of the Excelsior Property
13 in 1967 to the present, Defendants Released and Disposed, failed to prevent the Release and
14 Disposal and/or failed to undertake a Remedial Action to clean up their post-1967 Hazardous
15 Substances, including 1,4-dioxane that migrated starting in 1981, from their Excelsior property
16 onto PTB's adjacent property. Those Hazardous Substances from Defendants' property were
17 Released, Disposed, spilled, flowed or otherwise migrated onto or under PTB's property from the
18 Excelsior property, all without PTB's permission.

19
20 27. PTB is further informed and believes and thereon alleges that Defendants are
21 indirectly, directly and derivatively responsible for any of ABP's tortious acts, including the torts
22 of nuisance, trespass, and negligence.

23
24 28. Defendant Trusts are a "Person" as that term is defined in CERCLA section
25 101(21), 42 U.S.C. § 9601(21).

1 29. The Defendant Trusts' Excelsior property and ABP's operations thereon constitute
2 a "Facility" as that term is defined in CERCLA section 101(9), 42 U.S.C. section 9601(9).

3
4 30. PTB has discovered in the soils and groundwater under its property certain
5 Hazardous Substances as that term is defined in CERCLA section 101(14), 42 U.S.C. section
6 9601(14), including 1,4-dioxane. PTB is informed and believes and based thereon alleges that the
7 Hazardous Substances Released and/or Disposed during the times set forth above, Defendants
8 caused, failed to prevent and failed to remediate any such Release and/or Disposal of Hazardous
9 Substances at their property, as those terms are defined in CERCLA sections 101(22) and (29),
10 respectively, 42 U.S.C. sections 9601(22) and (29), respectively.

11
12 31. PTB is informed and believes and based thereon alleges that at the time of any
13 Release and Disposal of Hazardous Substances at its property, Defendants were an "Owner" or
14 "Operator" as those terms are defined in CERCLA section 101(20)(A), 42 U.S.C. section 9601
15 (20)(A).

16
17 32. PTB is informed and believes and based thereon alleges that Defendants caused or
18 failed to prevent the Release and/or Disposal of Hazardous Substances on their property, which
19 caused the Release of such substances on and under PTB's property as described, and both
20 elevated the level and caused the Release of Hazardous Substances in the soils and groundwater
21 surrounding PTB's property.

22
23 33. Defendants were and are the Owners and Operators of the Excelsior property for
24 the period of time that PTB alleges that Hazardous Substances were Released at the Excelsior
25 property. Defendants are liable to PTB for contribution to PTB's Remedial Action as Owners and
26 Operators under CERCLA and as Responsible Persons pursuant to California Health and Safety
27 Code section 25323.5.

1 34. Defendants are also liable to PTB due to their activities, involvement, inaction
2 and/or their prevention of these Releases and/or Disposal of Hazardous Substances at the
3 Excelsior property, including without limitation, their involvement in the approval, design,
4 construction, installation, and operation of the Vapor Degreaser on the Excelsior property.
5 Defendants are also responsible for contribution to PTB's Remedial Action as Owners and
6 Operators pursuant to CERCLA and as Responsible Persons pursuant to California Health and
7 Safety Code sections 25300, *et seq.*

8
9 35. Defendants are also liable to PTB for damages for nuisance, trespass, and
10 negligence due to their activities, involvement and inaction in the Release, and/or Disposal of
11 Hazardous Substances at the Excelsior property or their failure to prevent the Release and/or
12 Disposal of Hazardous Substances, including without limitation their involvement in the approval,
13 design, construction, installation and operation of the ABP Vapor Degreaser.

14
15 36. Defendants are also liable to PTB for comparative indemnity and implied equitable
16 indemnity due to their activities and involvement in the Release, and discharge of Hazardous
17 Substances at the Excelsior property, or their failure to prevent the Release and discharge of
18 Hazardous Substances including without limitation, their involvement in the approval, design,
19 construction, installation, and operation of the APB Vapor Degreaser.

20
21 37. Defendants are therefore liable to PTB by reason of the application of the doctrine
22 of *respondent superior* due to the actions, inactions and omissions of their tenants, agents and
23 employees, responsible for the Release and/or Disposal of Hazardous Substances onto and under
24 the Excelsior property: (a) for contribution under CERCLA; (b) for response costs under
25 California Health and Safety Code sections 25300, *et seq.*; (c) for damages for nuisance, trespass,
26 and negligence; and, (d) for comparative indemnity and implied equitable indemnity.

1 **TIMELINE 1967 - Present**

2 38. PTB is informed and believes and based thereon alleges that Defendants conducted
3 or allowed to be conducted certain industrial operations on or about their property from on or
4 about 1967 to the present, including APB's Vapor Degreasers.

5
6 39. PTB is informed and believes and based thereon alleges that, during this period
7 from 1967 through the present, as part of their or their tenants' industrial operations, Defendants
8 allowed their tenants to engage in manual degreasing of parts and machinery, as well as other
9 activities including the storage and Disposal of certain chemicals, which resulted in the Release of
10 certain Hazardous Substances, including one or more Hazardous Substances, to the soil and/or
11 groundwater on or about the Excelsior property that migrated onto or under PTB's property.

12
13 40. PTB is further informed and believes and based thereon alleges that in or about
14 1967, 1981 and continuing to the present, Defendants or their tenants began the process of
15 approving, designing, installing, testing and conducting operations of Vapor Degreasers, which
16 included a concrete catch basin to facilitate industrial degreasing operations (Vapor Degreasers).
17 These Vapor Degreasers were installed and later operated at a location on the Excelsior property
18 where significant amounts of one or more Hazardous Substances were Released and/or Disposed.

19
20 41. PTB is further informed and believes and based thereon alleges that during this
21 time period Defendants or their tenants were either directly involved in the approval of,
22 acquisition and startup of the Vapor Degreasers, including approval, control and/or involvement
23 relating to the design, purchase, installation, testing and startup operations of the Vapor
24 Degreasers, and the chemicals ultimately used in the day-to-day operations and maintenance of the
25 Vapor Degreasers both in 1967 and again in 1981, continuing to the present.

1 CERCLA sections 101(22) and (29), respectively, 42 U.S.C. sections 9601(22) and (29),
2 respectively.

3
4 47. PTB is informed and believes and based thereon alleges that at the time of any
5 Release and/or Disposal of Hazardous Substances at the Excelsior property, Defendants, and each
6 of them, were an “Owner” or “Operator” as those terms are defined in CERCLA
7 section 101(20)(A), 42 U.S.C. section 9601(20)(A).

8
9 48. CERCLA section 107(a)(2) imposes joint and several liability upon “any Person
10 who at the time of Disposal of any Hazardous Substances owned or operated any Facility at which
11 site Hazardous Substances were Disposed of” 42 U.S.C. § 9607(a)(2).

12
13 49. CERCLA section 113(f)(1) imposes strict liability upon “any Person who is liable
14 or potentially liable under [42 U.S.C. § 9607(a)]” 42 U.S.C. § 9613(f)(1).

15
16 50. CERCLA section 113(f)(1), 42 U.S.C. section 9613(f)(1), provides:

17 Any Person may seek contribution from any other Person who is
18 liable or potentially liable under section 9607(a) of this title, during
19 or following any civil action under section 9606 of this title or under
20 section 9607(a) of this title In resolving contribution claims, the
21 court may allocate [Remedial Action] response costs among liable
22 parties using such equitable factors as the court determines are
23 appropriate. (capitalization added)

24
25 51. PTB is informed and believes and based thereon alleges that Defendants, and each
26 of them, conducted themselves in a manner that directly, proximately, and causally contributed to
27 the damages sustained by PTB, as well as any costs incurred by PTB’s Remedial Action.

1 52. PTB is informed and believes and based thereon alleges that Defendants, and each
2 of them, failed, and continued to fail, to undertake Removal or Remedial Action concerning the
3 Hazardous Substances allegedly Released and/or Disposed at the Excelsior property in such a
4 manner that would have prevented their trespass onto PTB's property.

5
6 53. Defendants, and each of them, are therefore bound to pay contribution to PTB in a
7 total amount as yet unknown for which PTB makes claim according to proof at trial, for any
8 liability or potential liability under CERCLA section 107(a), 42 U.S.C. section 9607(a), including
9 response costs incurred by PTB's Remedial Action, which are consistent with the National
10 Contingency Plan, attorneys fees and costs under the doctrine of the tort of another, expenses for
11 environmental investigation and environmental experts, and all other costs and expenses incident
12 to the prosecution, investigation and handling of this action.

13
14 **SECOND CLAIM FOR RELIEF**

15 **(California Health & Safety Code §§ 25300, *et seq.* against all Defendants)**

16 54. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

17
18 55. PTB is informed and believes and based thereon alleges that Defendants are each a
19 Person as that term is defined in California Health & Safety Code section 25319.

20
21 56. The substances and constituents that may have been Released and/or Disposed at
22 the Excelsior property are Hazardous Substances as defined in California Health & Safety Code
23 section 25316.

24
25 57. As alleged fully above, PTB is informed and believes and based thereon
26 alleges that Defendants, and each of them, are each Responsible Parties under CERCLA section
27 107(a)(2), 42 U.S.C. section 9607(a)(2), and accordingly each are also a "liable Person" and a
28

1 “Responsible Person” as those terms are defined in California Health & Safety Code section
2 25323.5.

3
4 58. During the time period alleged, there was a Release of Hazardous Substances at the
5 Excelsior property, as that term is defined in California Health & Safety Code section 25320.

6
7 59. Pursuant to California Health & Safety Code section 25363(e), “[a]ny Person who
8 has incurred Removal or Remedial Action costs in accordance with this chapter or the federal act
9 may seek contribution and indemnity from any Person who is liable pursuant to this chapter”

10
11 60. In complying with the requirements of California Health & Safety Code sections
12 25300, *et seq.*, PTB has incurred and will incur Removal and/or Remedial costs for its Remedial
13 Action in the amount as yet unknown, for which PTB makes claim according to proof at trial.

14
15 **THIRD CLAIM FOR RELIEF**

16 **(California Civil Code § 3479 Against all Defendants)**

17 61. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

18
19 62. PTB is informed and believes and based thereon alleges that the actions and
20 omissions of Defendants, and each of their actions and failures to act with respect to the
21 Hazardous Substances that were Released and/or Disposed at the Excelsior property have
22 interfered with, and are continuing to interfere with, PTB’s comfortable enjoyment of its leasehold
23 interest.

24
25 63. PTB is informed and believes and based thereon alleges that such actions and
26 failures to act of Defendants and each of their actions and failures to act with respect to the
27 Hazardous Substances that may have been Released at the Excelsior property constitute a
28

1 substantial and unreasonable restriction on PTB's ability to exercise fully its rights in its real
2 property leasehold interest.

3
4 64. PTB has been specifically and specially harmed as a direct result of Defendants'
5 and each of their actions and failures to act.

6
7 65. PTB is informed and believes and based thereon alleges that Defendants, and each
8 of them, have created and are maintaining a nuisance that has caused PTB substantial harm in
9 violation of California Civil Code section 3479.

10
11 66. PTB is informed and believes and based thereon alleges that Defendants, and each
12 of their actions and failures to act, have caused PTB to incur damages, including without
13 limitation, Response and Remedial Action costs and related fees and costs for environmental
14 experts and attorneys, all in an amount unknown at this time for which PTB makes claim
15 according to proof at trial.

16
17 **FOURTH CLAIM FOR RELIEF**

18 **(Trespass Against all Defendants)**

19 67. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

20
21 68. PTB is informed and believes and based thereon alleges that Defendants, and each
22 of them, knew or should have known that they caused or allowed a Release and/or Disposal of
23 Hazardous Substances that may have spilled, leaked, or may have been otherwise migrated onto or
24 under PTB's property.

25
26 69. PTB is informed and believes and based thereon alleges that Defendants were and
27 are under a duty to abate the hazard of the Hazardous Substances they may have Released and/or
28

1 Disposed, allowed to be Released and/or Disposed or failed to prevent from being Released and/or
2 Disposed.

3
4 70. PTB is informed and believes and based thereon alleges that Defendants, and each
5 of them, by failing and continuing to fail to remove from the Excelsior property any and all the
6 Hazardous Substances that may be situated on or below the Excelsior property, have rendered and
7 are rendering the PTB leasehold less valuable and has caused PTB to incur response costs for its
8 Remedial Action, all in an amount unknown at this time for which PTB makes claim according to
9 proof at trial.

10
11 71. PTB is informed and believes and based thereon alleges that Defendants' and each
12 of their actions and failures to act have caused PTB to incur damages, including without
13 limitation, Response and Remedial costs for its Remedial Action and related expenses for
14 environmental experts, and attorneys fees and costs, all in an amount unknown at this time for
15 which PTB makes claim according to proof at trial.

16
17 **FIFTH CLAIM FOR RELIEF**

18 **(Negligence Against all Defendants)**

19 72. PTB incorporates by reference paragraphs 1 -42 as though fully set forth.

20
21 73. Defendants, and each of them, owe a duty to PTB, federal, state and local
22 governments and the general public to use reasonable care in the handling, storage, transportation,
23 Release and/or Disposal of Hazardous Substances, to prevent the wrongful Release and/or
24 Disposal of such Hazardous Substances at the Excelsior property.

25
26 74. PTB is informed and believes and based thereon alleges that at the time of these
27 actions, inactions and events, Defendants, and each of them, failed to exercise reasonable care in
28

1 the handling, storage, transportation and Release and/or Disposal of Hazardous Substances, which
2 caused the Release and/or Disposal of Hazardous Substances at the Excelsior property. The
3 failure to exercise reasonable care with respect to the Hazardous Substances at the Excelsior
4 property constitutes a breach of the duty owed by Defendants to, among others, PTB.

5
6 75. PTB is informed and believes and based thereon alleges that by breaching their
7 duty of care to PTB, Defendants, and each of them, have been the actual and proximate cause of
8 PTB incurring damages, including without limitation, Response and Remedial costs for its
9 Remedial Action and related costs for environmental experts and attorneys fees and costs, and
10 decrease in the value of PTB's leasehold interest, all in an amount unknown at this time for which
11 PTB makes claim according to proof at trial.

12
13 **SIXTH CLAIM FOR RELIEF**

14 **(Implied Equitable Indemnity Against all Defendants)**

15 76. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

16
17 77. PTB is informed and believes and based thereon alleges that Defendants, and each
18 of them, conducted themselves in and about the matters alleged that directly, proximately and
19 causally contributed to the damages sustained by PTB.

20
21 78. PTB contends that it is not liable for the damages it suffered as a result of the
22 Defendants' Releases, Disposal or failure to prevent such Releases and/or Disposal of Hazardous
23 Substances on or about the Excelsior property that resulted in the trespass of these Hazardous
24 Substances onto or under PTB's property. Defendants are therefore liable to PTB for its damages
25 as a result of the DTSC's requirements to remediate Defendants' Hazardous Substances on PTB's
26 property. This liability attaches by reason of the conduct or inaction of Defendants.

1 79. PTB is informed and believes and based thereon alleges that Defendants, and each
2 of them, are bound to indemnify and hold harmless PTB from any and all remediation costs,
3 losses, expert expenses, attorneys fees and costs incurred as a result of its compliance with
4 DTSC's cleanup requirements in its Remedial Action.

5
6 **SEVENTH CLAIM FOR RELIEF**

7 **(Comparative Indemnity Against all Defendants)**

8 80. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

9
10 81. PTB contends that it is not liable for the damages it suffered as a result of
11 Defendants' Release, Disposal or failure to prevent those Release and/or Disposal of Hazardous
12 Substances that have trespassed onto or under its property, but instead, PTB is entitled to be
13 indemnified on a comparative basis by Defendants, and each of them.

14
15 **EIGHTH CLAIM FOR RELIEF**

16 **(Declaratory Relief Against all Defendants)**

17 82. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

18
19 83. An actual, legal controversy now exists between PTB and Defendants, and each of
20 them. PTB thus seeks a judicial declaration of its respective rights and legal relations with
21 Defendants, and each of them, under Federal Rules of Civil Procedure, Rule 57, pursuant to 28
22 U.S.C. section 2201 and/or California Code of Civil Procedure section 1060.

23
24 84. PTB contends, among other things:

- 25 a. that Defendants are liable to PTB for its Remedial Action to remove the
26 contamination at issue; and,

1 b. that Defendants are obligated to reimburse PTB for its past, current and
2 future costs for its Remedial Action and other damages as a result of the
3 contamination at issue.

4
5 85. Defendants are expected to contend otherwise.

6
7 86. PTB asks the Court for a declaration of the respective rights, duties, liabilities and
8 obligations of the parties and the relative fault of each party, and all others, if any, who have
9 contributed to PTB's damages, if any, and for the application of equitable factors and principles in
10 determining the fault and liability of each party in making an allocation and apportionment for
11 contribution by, between and among the parties.

12
13 87. Declaratory judgment is therefore appropriate for numerous reasons, including the
14 following:

15 a. A declaratory judgment will prevent the need for multiple lawsuits as PTB
16 incurs costs of response in the future for which Defendants should be liable, and
17 provides a final resolution of the issues between these parties regarding liability for
18 PTB's remediation costs and other expenses alleged;

19
20 b. A declaratory judgment will assure that PTB will be reimbursed for costs
21 already paid and incurred which PTB should not have had to pay in the first place
22 in its Remedial Action; and,

23
24 c. Public interest will be served in that a declaratory judgment will ensure an
25 environmentally proper response.

1 88. Accordingly, PTB asks the Court for a declaration of the respective rights, duties,
2 liabilities and obligations of the parties and the relative fault of each party, and all others, if any,
3 who have contributed to PTB's damages, if any, and for the application of the principles of
4 indemnity and comparative indemnity by, between and among the parties.

5
6 89. A judicial determination of Defendants is necessary and appropriate at this time in
7 order that the parties may ascertain their rights and duties to one another.

8
9 **NINTH CLAIM FOR RELIEF**

10 **(Declaratory Relief Under CERCLA Against all Defendants)**

11 90. PTB incorporates by reference paragraphs 1 - 42 as though fully set forth.

12
13 91. CERCLA section 113(g)(2), 42 U.S.C. section 9613(g)(2), provides that in any
14 action for recovery of response costs, the Court shall enter a declaratory judgment on liability for
15 response costs or damages for PTB's Remedial Action that will be binding in any subsequent
16 actions concerning response costs or damages.

17
18 92. PTB asserts that Defendants, and each of them, rather than PTB, are liable for
19 PTB's future Remedial Action response costs incurred to comply with DTSC cleanup
20 requirements that relate to Hazardous Substances and in particular 1,4-dioxane, Released and/or
21 Disposed of by Defendants.

22
23 93. PTB is informed and believes and based thereon alleges that Defendants contend
24 otherwise.

25
26 94. The essential facts giving rise to the controversy between PTB, on the one hand,
27 and Defendants, on the other hand, and establishing PTB's right to declaratory relief, are set forth
28

1 in this Complaint, and establish that Defendants, and each of them, are liable as Persons who at
2 the time of any Release and/or Disposal, Owned or Operated a Facility at which Hazardous
3 Substances were Released and/or Disposed. CERCLA section 107(a)(2), 42 U.S.C. section
4 9607(a)(2).

5
6 95. A judicial determination of the parties' respective CERCLA liability to one another
7 is necessary and appropriate at this time in order that parties may ascertain their rights and duties
8 to one another in subsequent actions.

9
10 **PRAYER**

11 WHEREFORE, PTB prays for judgment against Defendants, and each of them, as follows:

12
13 **First Claim for Relief (Contribution under CERCLA):**

14 1. PTB be awarded contribution to its Remedial Action in an amount according to
15 proof at time of trial, but in any event no less than the amount of PTB's response costs, expert
16 expenses, and attorneys fees and costs; and,

17
18 2. For a declaration of the fault of Defendants, and each of them, which as to the First
19 Claim for Relief (Contribution under CERCLA) proximately caused and contributed to any and all
20 damage sustained by PTB in undertaking its Remedial Action.

21
22 **Second Claim for Relief (California Health & Safety Code sections 25300, et seq.):**

23 1. For response costs and expert expenses in PTB's Remedial Action;

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25 2. For additional injunctive relief; and,

26
27 3. For attorneys' fees and costs under the doctrine of the tort of another.
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Third Claim for Relief (Nuisance):

1. For compensatory damages in an amount to be proven at trial; and,
2. For additional injunctive relief.

Fourth Claim for Relief (Trespass):

1. For compensatory damages in an amount to be proven at trial; and,
2. For additional injunctive relief.

Fifth Claim for Relief (Negligence):

1. For compensatory damages in an amount to be proven at trial.

Sixth Claim for Relief (Implied Equitable Indemnity):

1. PTB be awarded implied equitable indemnity in an amount as against Defendants, and each of them, according to proof at time of trial, but in any event no less than the amount of PTB's response costs, expert expenses, and attorneys fees and costs expended and expected to be expended in its Remedial Action.

Seventh Claim for Relief (Comparative Indemnity):

1. PTB be awarded implied comparative indemnity in an amount as against Defendants, and each of them, according to proof at time of trial, but in any event no less than the amount of PTB's response costs, expert expenses, and attorneys fees and costs expended and expected to be expended in its Remedial Action.

1 **Eighth Claim for Relief (Declaratory Relief):**

2 1. For a declaration of respective fault of the parties that proximately caused and
3 contributed to any and all damages sustained by PTB in its Remedial Action.

4
5 **Ninth Claim for Relief (Declaratory Relief Under CERCLA):**

6 1. For a declaration of respective fault of the parties that proximately caused and
7 contributed to any and all damages sustained by PTB in its Remedial Action.

8
9 **All Claims for Relief:**

- 10 1. For attorneys' fees and costs of suit under the doctrine of the tort of another;
11
12 2. For prejudgment interest;
13
14 3. For attorneys' fees, costs and all other expenses incurred and to be incurred by PTB
15 in investigating this claim and in conducting its Remedial Action;
16
17 4. For damages in an amount according to proof at trial; and,
18
19 5. For such other relief as the Court may deem just and proper.
20

21 DATED: January 22, 2024

WLC | THE WILLIAMS LAW CORPORATION

22
23 By: 

24 J. Craig Williams
25 Attorneys for Plaintiff Precision Tube Bending
26
27
28

JURY DEMAND

Plaintiff Precision Tube Bending demands a trial by jury pursuant to Federal Rule of Civil Procedure Rule 38.

DATED: January 22, 2024

WLC | THE WILLIAMS LAW CORPORATION



By: _____

J. Craig Williams

Attorneys for Plaintiff Precision Tube Bending